

In re National Prescription Opiate Litigation: MDL 2804-Track Three
Summary Sheet of Concise Issues Raised

Motion: Defendants' Motion *In Limine* To Preclude The Use Of Misleading Handwritten Notes And Prevent Them From Being Admitted As Evidence.

Concise Description of the Issue: Should this Court prohibit Plaintiffs from showing the jury misleading handwritten notes and drawings created by counsel during depositions or similar notes or drawings created at trial.

Answer: Yes. Plaintiffs' counsel's writings created during witness depositions and similar demonstratives created at trial during witness testimony have no evidentiary value because they inaccurately and misleadingly characterize the testimony they purport to summarize and therefore should be prohibited as irrelevant. Moreover, because counsel's writings are inaccurate they could cause jurors to incorrectly recall the witness testifying to counsel's self-serving, argumentative, and misleading statements, which has a high tendency to cause prejudice to Defendants. This high tendency to cause prejudice, coupled with the writings' lack of probative value, compels the prohibition of these writings at trial.

Alternatively, the Court should order that any and all writings must accurately reflect the testimony given and will not be entered into evidence. Typically, summaries of admitted evidence are not admitted into evidence themselves—they are more akin to argument. Because such summaries are not evidence, the jury should not be provided them during its deliberations.